

1 BY MR. SCHMIDT:

2 Q Mr. Brooks, would you mind
3 introducing yourself to the Judge just by
4 giving your name and your current position?

5 A Yes. My name is Tim Brooks, and
6 I'm a Consultant on among other things
7 audience research matters.

8 Q Would you mind telling the Judge
9 what audience research is?

10 A That is the use of generally
11 third-party data compiled by independent
12 companies like Nielsen, the use of that data
13 to determine what the size and nature of
14 audience to different networks and programs
15 is, and how that data can be used to
16 facilitate their businesses.

17 Q What usage do the networks make of
18 audience research?

19 A They make several. In the first
20 instance, they will use ratings data to
21 quantify the size and nature of, basically,
22 their audience, and to maximize the

1 attractiveness of their audience to
2 advertisers by their choice of programs, by
3 their choice of scheduling, that sort of
4 thing. Then they will use that data to sell.
5 What advertisers want to buy is audiences, and
6 that's documented by audience ratings.

7 Q Have you been asked to give an
8 opinion in this case based on your -- as an
9 expert witness based on your experience in
10 audience research?

11 A Yes, I have.

12 MR. SCHMIDT: What I'd like to do,
13 if I may approach, Your Honor, is give you a
14 copy of your direct testimony in this case.

15 JUDGE SIPPEL: That will be fine.

16 MR. SCHMIDT: Thank you.

17 THE WITNESS: Thank you.

18 BY MR. SCHMIDT:

19 Q I put in front of you, Mr. Brooks,
20 what has been marked for identification as
21 Tennis Channel Exhibit 17. It has not yet
22 been moved into evidence. I'll do that in a

1 moment.

2 Before I do, is what I've marked
3 as Tennis Channel Exhibit 17 a copy of your
4 direct testimony given under oath along with
5 an attachment that is your CV at the end of
6 it?

7 A Yes.

8 (WHEREUPON, THE AFOREMENTIONED
9 DOCUMENT WAS MARKED TENNIS CHANNEL
10 EXHIBIT 17 FOR IDENTIFICATION)

11 BY MR. SCHMIDT:

12 Q And do you give the opinions
13 rendered in Exhibit 17 to a reasonable degree
14 of professional certainty?

15 A Yes, I can.

16 MR. SCHMIDT: Okay. Your Honor,
17 we would move this into evidence at this time.

18 MR. TOSCANO: No objection.

19 JUDGE SIPPEL: No objection. It's
20 in evidence as Tennis Channel Exhibit 17.

21 (WHEREUPON, THE DOCUMENT
22 PREVIOUSLY MARKED TENNIS CHANNEL

1 EXHIBIT 17 FOR IDENTIFICATION WAS
2 RECEIVED.)

3 MR. SCHMIDT: Thank you, Your
4 Honor.

5 JUDGE SIPPEL: Continue.

6 BY MR. SCHMIDT:

7 Q What I'd like to do, very briefly,
8 is talk a little bit about your experience.
9 And the place to start maybe with your CV on
10 page 36 of Exhibit 17.

11 JUDGE SIPPEL: What is does that
12 stand for, Curriculum Vitae?

13 MR. SCHMIDT: Yes, sir. Fancy
14 word for resume. .

15 JUDGE SIPPEL: Okay. I want to
16 learn the Latin words --

17 (Laughter.)

18 BY MR. SCHMIDT:

19 Q Is this a copy of your CV, Mr.
20 Brooks?

21 A Yes, it is.

22 Q Tell us, if you would, how long

1 it's been that you've been devoting your
2 career to questions of audience ratings in the
3 television industry?

4 A It's been a principal part of my
5 career for 41 years.

6 Q Has that time been spent at
7 various television networks?

8 A Yes, it has.

9 Q Would you mind telling us some of
10 those networks?

11 A Most recently, Lifetime Television
12 Networks from 2000 to 2007. Prior to that,
13 USA Networks and the SciFi Channel during the
14 1990s. Prior to that, at a major advertising
15 agency for a couple of years, so I've been on
16 the buying side, as well. And prior to that,
17 mostly at NBC during the 1970s and 1980s.

18 Q And the time you just described,
19 within those various positions how much of
20 your time has been focused on audience
21 research generally speaking?

22 A Audience research as we've defined

1 it here has varied from all of my time to, I
2 would say, half to three-quarters.

3 Q In addition to the work you've
4 done at networks, the paying work you've done,
5 have you also been involved in industry
6 organizations?

7 A Yes. I made that a very prominent
8 activity in my career.

9 Q Is that what we see on page 37 of
10 your CV about halfway down the page where it
11 says, "Industry Leadership?"

12 A That's correct.

13 Q I don't plan to go through all of
14 these, but let me just ask you about a couple
15 of these. The first one I'll ask you about is
16 the one that appears at the very bottom of
17 page 37, the Advertising Research Foundation.
18 Could you tell us in a sentence just what that
19 is?

20 A That's an organization whose
21 membership is comprised of advertising
22 agencies, advertisers, and network

1 representatives who are researchers who come
2 together for the point of common concerns in
3 research matters.

4 Q What was your highest role?

5 A I was the Chairman of the Board.

6 Q Let's turn the page to 38. What's
7 the Media Rating Council?

8 A That's the watchdog agency for the
9 television industry measurement business. It,
10 again, is made up of buyers and sellers of
11 advertising time. And they come together to
12 literally audit, and then as appropriate
13 accredit the major ratings agencies, such as
14 Nielsen and others.

15 Q What was your highest role there?

16 A I was the Chairman of the Board of
17 that, also.

18 Q The next item is Cable Television
19 Advertising Bureau. Could you tell us in a
20 sentence what that is?

21 A That's a trade organization made
22 up of cable networks and others in the cable

1 field. It also has research committees, and
2 it promotes the cable industry.

3 Q And then let me skip over one, the
4 Cable and Telecommunications Association for
5 Marketing. What is that?

6 A Commonly known as CTAM. That's a
7 marketing association for the cable industry
8 where representatives of both cable networks,
9 and also cable distributors, including Comcast
10 and many others come together on matters of
11 common concern, including research.

12 Q What was your highest role at
13 CTAM?

14 A I was a member of their National
15 Board, and Chairman of their Research
16 Committee for several terms.

17 Q One of those items on your CV
18 about two-thirds of the way down page 38, you
19 have a list of honors and awards. I don't
20 want to go through all of those. I just want
21 to ask you about the first one, the
22 Advertising Research Foundation Lifetime

1 Achievement Award. What was that for?

2 A That was, I'm very humble to say,
3 presented to me in 2008 from the ARF as I
4 believe their first Lifetime Achievement
5 Award.

6 Q If we look on the next page, 39,
7 there's a list of selected publications and
8 speeches. Again, I just want to ask you about
9 the first publication. Could you tell us what
10 the Complete Directory to Prime Time Network
11 and Cable TV Shows is?

12 A Yes. This was the first of my
13 books. It's been out for 30 years now in new
14 editions. It is an encyclopedia of all series
15 programming on broadcast and cable networks,
16 believe it or not, that has aired since
17 television began in the 1940s.

18 Q Being an author of that book
19 require you to watch pretty much every
20 television show?

21 A You'll see my eyes blur from time
22 to time. It requires me to watch virtually

1 everything on television at least
2 occasionally, including all programming and
3 just about all networks to get a sense of
4 them, yes.

5 Q In addition to this experience
6 that we've gone through, have you also taught
7 at the university level on audience research
8 questions?

9 A Yes, I have.

10 Q One other thing I can't resist
11 asking you about; have you won a Grammy Award?

12 A Yes.

13 Q Let me turn to the substance of
14 your opinions earlier in your report. And
15 before I ask you about that specific
16 substance, have you had the opportunity to
17 review documents in this case related to Golf
18 Channel, Tennis Channel, and Versus?

19 A Yes.

20 Q In conducting your analysis to
21 reach your opinions in this case reviewing
22 those documents, did you perform the same type

1 of methodology that you normally use in your
2 audience research work?

3 A Yes, I did.

4 Q Well, let me ask you about the
5 substance of your opinions then. And I would
6 direct your attention, if I may, to what I
7 understand to be your first opinion on page 2
8 of Exhibit 17, Tennis Channel Exhibit 17.

9 Did you reach opinions on whether
10 Tennis Channel, Golf Channel, and Versus were
11 similarly situated?

12 A Yes, I did.

13 Q What was that opinion?

14 A After reviewing a wide range of
15 data, my conclusion is that they -- those
16 certain networks are indeed similar, and in
17 fact two of them, the Tennis Channel and Golf,
18 are virtually peas in a pod. They're very,
19 very close on all meaningful measures.

20 In fact, my knowledge of the rest
21 of the cable universe, I would be hard-pressed
22 to find in any sector, news, or movies, or

1 whatever two networks as closely paired as
2 those two are. And Versus is quite close, as
3 well.

4 Q Let me ask you about some of the
5 data you looked at to reach that opinion. Did
6 you consider whether the three channels were
7 in the same programming category?

8 A Yes.

9 Q And what were your conclusions on
10 that?

11 A Well, they're clearly in the
12 sports category. And more than that, they're
13 also in the year-round sports category, unlike
14 an NFL, or a network that is a seasonal. And
15 two cases, of course, they are single sports
16 networks. And in the other case, it's multi-
17 sports but, again, seasonal with similar kinds
18 of level of events.

19 Q Did you conduct an analysis of the
20 ratings for these three networks?

21 A I did.

22 Q And why did you look at ratings?

1 A Well, the first thing we wanted to
2 look at is ratings. When asked this question,
3 the first question I would have, and I think
4 most researchers would have is what's the
5 absolute size of the audience? Are these very
6 disparate, or are they in the same range in
7 terms of their overall audience size compared
8 on an equal basis, on an apples-to-apples
9 basis, which we can go into. And my
10 conclusion here is that they are quite similar
11 in the audience size.

12 Q You have various calculations or
13 analyses of ratings data in your direct
14 testimony. I'd like to show you just one table
15 out of that.

16 Before I do that, let me ask you a
17 little more about ratings. Are there national
18 ratings, and more specific regional ratings?

19 A National ratings and local
20 ratings, yes.

21 Q What's the difference between
22 those two?

1 A National ratings as published by
2 the Neilsen Company cover the entire U.S., and
3 viewership to nationally distributed networks
4 and programs on a national basis. Local
5 ratings -- and they operate, primarily, for
6 the benefit and are bought by networks,
7 obviously.

8 Local ratings are, primarily, for
9 the benefit of local television stations, and
10 they measure the viewership in individual
11 markets, 210 markets of the U.S.

12 Q Did Tennis Channel have national
13 ratings?

14 A Tennis Channel did not.

15 Q Were you surprised by that?

16 A No, not at all.

17 Q Why is that?

18 A I'm sorry?

19 Q Why is that?

20 A Well, in my experience, as I
21 mentioned, having been involved in the launch
22 of the SciFi Channel, Lifetime Movie Network,

1 startup networks, it was clear in those cases,
2 and in others that I know of, that limited
3 distribution networks; that is, those with
4 less than roughly 40 or 50 million subscribers
5 rarely subscribe to the Nielsen Service. And
6 that's because, first, it's extremely
7 expensive to subscribe to. And, secondly, it
8 gets you very little traction in sales because
9 advertisers, national advertisers won't buy
10 you at that level whether you have ratings or
11 not. So, it was not a surprise at all. In
12 fact, I would have been surprised if it had
13 been otherwise.

14 Q I'd like to show you one of the
15 tables from your direct testimony. I believe
16 it appears on page 21 of your direct
17 testimony. I modified it by taking out the
18 national ratings data for Golf Channel and
19 Versus, so that it only shows the local
20 ratings.

21 MR. SCHMIDT: This is a new
22 document that's not yet an exhibit. May I

1 approach to give it to Mr. Toscano.

2 JUDGE SIPPEL: You may.

3 MR. SCHMIDT: It's been marked for
4 identification as Tennis Channel Exhibit 195.

5 (WHEREUPON, THE AFOREMENTIONED
6 DOCUMENT WAS MARKED TENNIS CHANNEL
7 EXHIBIT 195 FOR IDENTIFICATION)

8 MR. TOSCANO: Thank you.

9 MR. SCHMIDT: You're welcome. At
10 this time, we would move this into evidence,
11 Your Honor.

12 JUDGE SIPPEL: Did you prepare
13 this yourself?

14 MR. SCHMIDT: It's an extract from
15 a table that I prepared.

16 JUDGE SIPPEL: Okay. Any
17 objection?

18 MR. TOSCANO: No objection, Your
19 Honor.

20 JUDGE SIPPEL: It's received as
21 Tennis Channel Exhibit 195. Thank you.

22 (WHEREUPON, THE DOCUMENT

1 PREVIOUSLY MARKED TENNIS CHANNEL
2 EXHIBIT 195 FOR IDENTIFICATION WAS
3 RECEIVED.)

4 MR. SCHMIDT: Okay.

5 BY MR. SCHMIDT:

6 Q What does this table show?

7 A This shows the ratings for Tennis
8 Channel, Golf Channel, and Versus in 2009 and
9 2010. That's what it shows.

10 Q And what did you conclude when you
11 looked at the numbers that are reflected in
12 Tennis Channel Exhibit 195, the local ratings
13 between Tennis Channel, Golf Channel, and
14 Versus? And I should caution you, if you need
15 to talk about specific numbers in this table,
16 let us know. We may need to send folks out of
17 the room. But if you can answer that without
18 referring to specific numbers, please go
19 ahead.

20 A I'll attempt to do so. Stop me if
21 I -- I'm a research guy, so I tend to talk
22 that way. But these show me as a first look

1 at the overall audience size of these three
2 networks that they were extremely similar to
3 each other. And, in fact, within hundredths
4 of a rating point of each other.

5 Q Okay. Let's talk about
6 demographics. Did you compare the demographics
7 between the three networks?

8 A I did.

9 Q And you have various charts on
10 this in your testimony. Let me see if I can
11 summarize them just at a very high level. What
12 did you see with respect to income across the
13 three networks in terms of audience
14 demographics?

15 A The metrics that I examined
16 indicated that all three of those networks
17 skew toward upper income viewers, which I
18 should add in television is a very desirable
19 and hard to reach group.

20 JUDGE SIPPEL: Which is?

21 THE WITNESS: Upper income
22 viewers.

1 MR. SCHMIDT: That's not on this
2 table. That's on another --

3 JUDGE SIPPEL: Why is that? Why
4 are they hard to reach?

5 THE WITNESS: Because the
6 viewership of television is the most -- lower
7 income people. Upper income people watch much
8 less television at any time overall, so if you
9 can find a network that appeals to those, you
10 have an audience that is very desirable for
11 many advertisers, especially upscale cars, and
12 property, and credit cards, and things like
13 that, which they can't get on their mainstream
14 programs.

15 JUDGE SIPPEL: Thank you.

16 BY MR. SCHMIDT:

17 Q Did you draw any conclusions about
18 the income data in terms of these three
19 networks?

20 A Yes, in all three cases the
21 network audiences -- the audiences of these
22 networks was skewed toward upper income

1 viewers.

2 Q Did you look at the gender
3 composition of these three networks audiences?

4 A I did.

5 Q What did you find with respect to
6 that?

7 A They were all oriented toward male
8 viewers, more so than female viewers.

9 Q And why, if at all, does that
10 matter to your opinions?

11 A Well, interestingly, like upscale
12 viewers, men are not as heavy viewers of
13 television as women are. Television is a
14 somewhat female skewed medium overall for a
15 lot of reasons. And, therefore, advertisers
16 who want to reach men don't have the range of
17 choices that advertisers who want to reach
18 women primarily do. So, it is -- it can for
19 a wide range of advertisers, not all,
20 obviously, but many advertisers be an
21 advantage to have a male somewhat -- more male
22 orientation.

1 Q Does it impact your opinions about
2 whether the networks are similar; at Golf
3 Channel is that about percent male, and
4 Tennis Channel is about percent male?

5 A No, because when I look at
6 demographics even in more detail than this, I
7 look at categories as opposed to specific
8 numbers. That's the way television is sold.
9 It's sold in ranges, not by medians or
10 specific numbers of that kind.

11 So, in the case of gender
12 differences, for example, I would look at
13 whether a network is male skewed, is female
14 skewed, or is balanced. It's basically three
15 categories. And I can get into more detail
16 about what the dividing lines between them
17 are, but all three of these, to me, clearly
18 fell within the male skewed type.

19 Q Did you consider data on the age
20 of viewers who watch these three networks?

21 A Yes, I did look at that.

22 Q What did that data show you?

1 A Similarly, if you categorize
2 networks as youth oriented, and child and teen
3 oriented, young adult oriented, sort of mid
4 oriented which is a very big sales area, or
5 older oriented, these all fell in the adult
6 area, first of all, and in the 40 to 50 range,
7 40 to low 50s range in terms of age
8 demographics. So, they would be strongest in
9 25 to 54 age bracket, 35 to 64 age bracket,
10 those middle age brackets all three cases.

11 Q And did that make them similar or
12 dissimilar in your view?

13 A Similar.

14 Q Did you -- let me take a step
15 back. The Judge was shown yesterday some data
16 on the median age of viewers for the three
17 different networks. Do companies typically
18 use median age in marketing their networks to
19 advertisers, in your experience?

20 A No.

21 Q How do they market themselves in
22 terms of age, in your experience?

1 A They market themselves by ranges,
2 age ranges which have been very well
3 established for many, many years. So, you
4 market yourself as a network with a strength
5 in the 18 to 49 category, or the 25 to 54
6 category, whatever your range is. Those
7 ranges have basically been defined by Nielsen,
8 accepted by advertisers over many years, so I
9 look at those kinds of ranges because that's
10 what drives the advertising marketplace.

11 Q Even if you looked at the median
12 age instead of the ranges, looking only at the
13 median age, do you find these three networks
14 to be dissimilar based on their median ages?

15 A Well, if I looked at the median
16 ages, if the ages range from -- median ages
17 depending on what you look at, obviously, they
18 vary, range from something from 40 or the low
19 40s up to the low 50s. And all three of those
20 fall within the 25 to 54, and for that matter
21 35 to 64 bracket, so they all seem to be
22 concentrating on that same age range.

1 Q Let's move on to the next type of
2 data that you've looked at. Did you consider
3 viewer satisfaction data, and the general
4 popularity of the sports shown on these three
5 networks versus Golf Channel and Tennis
6 Channel?

7 A Yes.

8 Q What did that show you?

9 A That's a metric that's important,
10 particularly to distributors. And in my work
11 with distribution of startup networks and
12 established ones, we use that a lot.

13 The data from the Beta Research
14 Corporation show that two of the three
15 networks I was asked to look at are measured
16 by them. That is an optional service that a
17 company can choose to be measured, or not to
18 be measured, unlike Nielsen. And those two
19 were Versus and the Tennis Channel.

20 In both of those cases, or in
21 those cases the metrics that they have found
22 for the appeal of those networks on a number

1 of questions, and it was quite similar.

2 I think you asked also about the
3 sports?

4 Q Yes, popularity of sports.

5 A Yes. I did also look at the
6 popularity of the sport. Now, the popularity
7 of the sport is not a predictor of the
8 popularity of the channel, necessarily. So,
9 football is very popular, but that doesn't
10 mean you'll get huge ratings -- I'm sorry.
11 Football is very popular on television. That
12 doesn't mean you have to play football to like
13 it. Participation is much lower.

14 However, significant changes in
15 participation over time can be a predictor of
16 where a sport is moving. Is it gaining in
17 popularity, or losing popularity? So, that's
18 what I looked at. And it turned out in this
19 case that the popularity of tennis as a sport,
20 as a participatory sport had increased
21 remarkably over the last 10 years; whereas, no
22 other major sport had shown that, and most

1 were done, including golf. So, that was an
2 indicator of growth in interest in this sport.

3 Q So, having looked at this data
4 type of program and ratings, demographics,
5 viewer satisfaction, and popularity of the
6 sport, what conclusions did you reach
7 regarding whether Tennis Channel, Golf
8 Channel, and Versus are similarly situated?

9 A Taking that all into account, I
10 would come to the conclusion, as I said
11 earlier, that they are certainly similar in
12 appeal. And in some cases extremely similar.

13 Q That takes us all the way up to
14 page 32 of your report, Tennis Channel Exhibit
15 17. The second opinion you offer is regarding
16 harm. What opinions did you reach regarding
17 whether Tennis Channel was impacted by the
18 amount of carriage that it receives?

19 A Oh, my conclusion was that it was,
20 clearly, impacted based not only what I saw
21 here, but with my own experience in the
22 industry with new networks, that distribution.